



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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### **9 VAC 25-32 – Virginia Pollution Abatement Permit Regulation**

#### **Department of Environmental Quality**

April 12, 2005

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

§62.1-44.17:1 of the Code of Virginia requires that all confined animal feeding operations with 300 or more animal units utilizing a liquid manure collection and storage system be permitted under a general Virginia Pollution Abatement (VPA) permit. Chapter 375 of the 2003 Acts of Assembly amended §62.1-44.17:1 of the Code of Virginia such that the State Water Control Board (board) promulgate regulations requiring Virginia Pollution Discharge Elimination System (VPDES) permits for confined animal feeding operations to the extent necessary to comply with the federal Clean Water Act.

In 2003, the Environmental Protection Agency (EPA) amended 40 CFR 9, 122, 123, and 412 such that certain types of animal feeding operations are required to be permitted under a National Pollution Discharge Elimination System permit. The VPDES is Virginia's equivalent of such a permit. The new concentrated animal feeding operation (CAFO) rule became effective on April 14, 2004. A new general permit regulation (9 VAC 25-191) was promulgated in 2004,

in accordance with §62.1-44.17:1 of the Code of Virginia, to regulate animal feeding operations that meet the federal definition of a CAFO.

The proposed regulation eliminates the requirement for CAFOs regulated under a VPDES permit to obtain a VPA permit. The proposed regulation also includes changes that make the regulation consistent with the Code of Virginia and with other existing regulations. It also adds new language, modifies existing language, and deletes redundant language for the purpose of clarity.

### **Estimated Economic Impact**

The proposed regulation eliminates the requirement for CAFOs regulated under a VPDES permit to obtain a VPA permit. Effective April 14, 2003, federal regulations require certain types of animal feeding operations to be regulated under a VPDES permit. According to the Department of Environmental Quality (DEQ), the new federal rule effectively requires animal feeding operations with 1,000 animal units or more to obtain a VPDES permit. Requiring VPDES permits rather than VPA permits for these types of animal feeding operations was based on the potential of such operations for discharge into state waters. According DEQ, there have been documented cases of fish kills as a result of discharge from animal feeding operations into ground and surface waters.

The VPDES General Permit for Concentrated Animal Feeding Operations (9 VAC 25-191) was adopted in early 2004 to regulate animal feeding operations that meet the federal definition of a CAFO. As VPDES permit requirements are more extensive<sup>1</sup> and include all the provisions of a VPA permit, DEQ believes that it is unnecessary for operations regulated under a VPDES permit to obtain a VPA permit. The existing regulation requires all confined animal feeding operations with 300 or more animal units to obtain a VPA permit, regardless of whether they have a VPDES permit or not. The proposed regulation will eliminate the VPA requirement for animal feeding operations regulated under a VPDES permit.

The proposed regulation is likely to produce a net positive economic impact. Animal feeding operations holding a VPDES permit will no longer be required to obtain a VPA permit. DEQ does not charge a fee for the review and issuance of VPA permits to animal feeding

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<sup>1</sup> Specifically, VPDES permit requirements include more extensive recordkeeping and reporting requirements and higher civil penalties for non-compliance compared to a VPA permit.

operations. According to DEQ, it costs such operations approximately \$120 to apply for and obtain a VPA permit.<sup>2</sup> In addition, DEQ incurs costs to review and issue the permits. The agency estimates that it costs them approximately \$60 to review and issue a general VPA permit to an animal feeding operation. Due to the overlap between the requirements of a VPA permit and those of a VPDES permit, the cost savings to applicants and DEQ from the proposed change are likely to be less than the estimates provided above. Much of the research and documentation to be submitted in order to obtain a VPA permit is similar to what is required in order to obtain a VPDES permit. Moreover, DEQ review of a VPA permit application is similar to the review required for a VPDES permit application. In addition to the cost savings associated with the not having to apply for and obtain a VPA permit, the proposed change could also produce compliance cost savings. Animal feeding operations regulated under a VPDES permit would no longer have to comply with the requirements of this regulation and DEQ would no longer have to enforce the requirements of the regulation. However, the cost savings from not having to comply with or enforce the requirements of the VPA regulation are not likely to be significant. As mentioned previously, VPDES permit requirements are more extensive and include all the provisions of a VPA permit. Thus, eliminating the VPA requirement for animal feeding operations that are regulated under a VPDES permit will not have a significant impact on compliance costs. Following the implementation of this regulation DEQ estimates that up to 152 animal feeding operations will no longer be required to obtain a VPA permit.<sup>3</sup> Thus, animal feeding operations regulated under a VPDES permit will incur cost savings from not having to obtain a VPA permit and DEQ will receive cost savings from not having to review and issue VPA permits to these entities.

These cost savings will be achieved at no additional cost to the state. According to DEQ, VPDES requirements include all the provisions of the VPA permit. Thus, eliminating the requirement for a VPA permit for animal feeding operations regulated under a VPDES permit is

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<sup>2</sup> Assuming it takes a moderate-sized animal feeding operation with an annual income of \$30,000 eight hours to conduct research, gather documents, and fill out the registration statement.

<sup>3</sup> A more precise estimate of the number of affected entities is not possible at this time due to on-going litigation over the new federal CAFO rule. The federal rule states that if a facility is of a certain size, then it has the potential to discharge, and is, thus, required by the Clean Water Act to obtain an NPDES permit. The 2<sup>nd</sup> Circuit Court of Appeals ruled that this philosophy ran counter to the Clean Water Act, and that a discharge must occur if a facility is to be required to obtain an NPDES permit. The exact number of animal feeding operations in Virginia required to obtain a VPDES permit will depend on modifications to the federal regulation and application of the discharge

not likely to produce any negative environmental and public health consequences. Animal feeding operations have the potential to create serious environmental and health hazards as a result of their activities. The aim of the permitting mechanism is to ensure that these activities are conducted in a manner that is protective of public health and the environment. As a VPDES permit provides equivalent, if not better, protection to public health and the environment than a VPA permit, the proposed change is not likely to produce any negative public health or environmental consequences.

Overall, the proposed change is likely to produce cost savings for certain types of animal feeding operations and DEQ with no detrimental effect on public health or the environment. Thus, the net economic impact associated with the proposed change is likely to be positive.

The proposed regulation also includes changes that make the regulation consistent with the Code of Virginia and with other existing regulations. Chapter 1 of the 1999 Acts of Assembly amended §62.1-44.17:1.1 of the Code of Virginia to require confined poultry feeding operations with 200 or more animal units to be regulated under a VPA permit. The VPA general permit regulation for poultry waste management (9 VAC 25-630) establishes requirements for confined poultry feeding operations. The proposed regulation aligns the requirements of this regulation with those of the poultry waste management regulation. As these requirements have been in place since 2001, the proposed change is not likely to affect current practice and, thus, not likely to have a significant economic impact. The proposed regulation also adds new language, modifies existing language, and deletes redundant language for the purpose of clarity. To the extent that these changes improve understanding and implementation of the regulation, they are likely to produce some small economic benefits.

## **Businesses and Entities Affected**

The proposed regulation is likely to affect certain types of animal feeding operations that meet the federal definition of a CAFO. As these operations are to be regulated under a VPDES permit, the proposed regulation eliminates the requirement for them to obtain a VPA permit.

DEQ estimates that up to 152 animal feeding operations will no longer be required to obtain a VPA permit.

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criterion to animal feeding operations in response to appeals court ruling. However, DEQ believes that 152 is the maximum number of entities likely be affected by the proposed regulation.

## **Localities Particularly Affected**

The proposed regulation applies to all localities in the Commonwealth.

## **Projected Impact on Employment**

The proposed regulation is not likely to have a significant impact on employment in the Commonwealth.

## **Effects on the Use and Value of Private Property**

The proposed regulation is likely to have a positive impact on the use and value of private property. Animal feeding operations meeting the federal definition of a CAFO will no longer be required to obtain a VPA permit. This will produce cost savings for these entities, thus reducing their operating costs and increasing their asset values.